

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAHMIER A. EVERETT,

Plaintiff,

v.

3:20-CV-1260
(GTS/ML)

SHAWN DEAN, #3223, Investigator, N.Y.S. Police;
and RONALD LUSSI, #2982, Sr. Investigator/Supervisor,
N.Y.S. Police,

Defendants.

APPEARANCES:

JAHMIER A. EVERETT, No. 259063
Plaintiff, *Pro Se*
Broome County Correctional Facility
P.O. Box 2047
Binghamton, New York 13902-2047

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Jahmier A. Everett (“Plaintiff”) against two above-captioned individuals (“Defendants”), is United States Magistrate Judge Miroslav Lovric’s Report-Recommendation recommending that certain claims in Plaintiff’s Amended Complaint be dismissed with prejudice (and without prior leave to amend), certain other claims be dismissed without prejudice (and with a limited leave to amend), and the remainder of the claims be permitted to proceed. (Dkt. No. 12.) Plaintiff has not filed an Objection to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.) After carefully reviewing the relevant papers herein, including

Magistrate Judge Lovric's thorough Report-Recommendation, the Court can find no clear error in the Report-Recommendation.¹ Magistrate Judge Lovric employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Lovric's Report-Recommendation (Dkt. No.12) is ACCEPTED and ADOPTED in its entirety; and it is further
ORDERED that the following claims in Plaintiff's Amended Complaint (Dkt. No. 9) are DISMISSED with prejudice and without leave to amend: (1) Plaintiff's claim of respondent superior against Defendant Lussi in his individual capacity; (2) his claim of due process violations against Defendants; (3) his claim of fabrication of evidence against Defendant Lussi; (4) all claims against Defendants in their official capacities; and (5) his claim of harassment pursuant to New York state common law against Defendants; and it is further

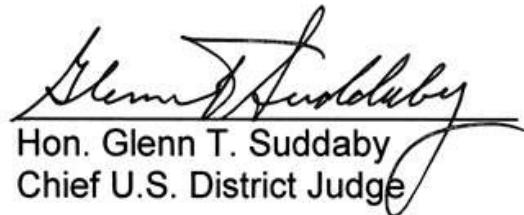
ORDERED that Plaintiff's claim of supervisory liability against Defendant Lussi in his individual capacity is DISMISSED without prejudice to repleading during the pendency of this action and with leave to amend within **THIRTY (30) DAYS** of the date of this Decision and Order; and it is further

¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear-error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a clear-error review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

ORDERED that **SURVIVING** the Court's *sua sponte* review of his Amended Complaint the remaining claims in Plaintiff's Amended Complaint: (1) Plaintiff's claim of fabrication of evidence against Defendant Dean in his individual capacity; (2) his claim of defamation against Defendant Dean in his individual capacity; (3) his claim of false arrest in violation of the Fourth Amendment against Defendants; and (4) his claim of malicious prosecution against Defendants in their individual capacities; and it is further

ORDERED that the Clerk of Court is directed to issue Summons and forward them, along with a copy of the Complaint, to the U.S. Marshal for service upon the remaining Defendants, who are directed to respond in accordance with the Federal Rules of Civil Procedure.

Dated: July 19, 2021
Syracuse, New York



Hon. Glenn T. Suddaby
Chief U.S. District Judge